



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JESUS BARRIOS,)	
)	
COMPLAINANT,)	CHARGE NO. 2002CF0474
)	ALS NO. 11855
)	
AND)	
)	
)	
SARA LEE COFFEE AND TEA,)	
SERVICE,)	
)	
RESPONDENT.)	

RECOMMENDED ORDER AND DECISION

On August 5th, 2002, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Jesus Barrios. That complaint alleges that Respondent, Sara Lee Coffee and Tea Service, discriminated against Barrios on the basis of his national origin when it terminated his employment on August 13th, 2001. Respondent filed a timely verified answer on September 4th, 2002.

This matter was scheduled for a three-day public hearing, which was to begin on June 3rd, 2004. On that date, both Complainant's and Respondent's counsel appeared at the Commission, with Complainant's counsel making an oral motion for a continuance of the hearing. In support of his motion, Complainant's counsel argued that over the last several months he had lost contact with Mr. Barrios. Respondent presented its objections to that motion, arguing that the case should be dismissed for want of prosecution.

After consideration of the parties' arguments, this tribunal denied Complainant's motion for a continuance, indicating that a written recommendation of dismissal for want of prosecution would be forthcoming. The matter is now ready for decision.

FINDINGS OF FACT

1. On August 5th, 2002, the Illinois Department of Human Rights filed a *Complaint of Civil Rights Violation* with the Illinois Human Rights Commission on behalf of Complainant, Jesus Barrios.
2. On September 4th, 2002, Respondent, Sara Lee Coffee and Tea Service, filed its *Verified Answer to Complaint*.
3. On September 26th, 2002, both Complainant and Respondent appeared through counsel for an initial status hearing before former Administrative Law Judge Nelson E. Perez.
4. At a discovery status hearing on July 24th, 2003, former Administrative Law Judge William H. Hall IV ordered discovery in this matter closed.
5. At the discovery status hearing on July 24th, 2003, Judge Hall also ordered Complainant to present an initial draft of a Pre-Hearing Memorandum to Respondent by August 23rd, 2003.
6. Additionally on July 24th, 2003, Judge Hall ordered that the final draft of the parties' Pre-Hearing Memorandum was to be filed with the Commission by September 25th, 2003 and that the parties were to appear for a final status hearing at 2:00 p.m. on that same day.
7. On September 25th, 2003, Respondent's counsel appeared for the scheduled final status hearing before Judge Hall and Complainant's counsel failed to appear.
8. On September 25th, 2003, Judge Hall granted Respondent's counsel leave to file a motion to dismiss for failure to prosecute due to lack of activity in the case and

Complainant's failure to serve Respondent with the initial draft of the Pre-Hearing Memorandum by August 23rd, 2003. On that same day, Judge Hall also ordered the parties to appear for a status hearing on October 30th, 2003

9. On September 26th, 2003, Respondent filed a Certificate of Service with the Commission certifying that it had served a copy of Judge Hall's order of September 25th, 2003 upon Complainant's counsel.

10. On October 14th, 2003, Respondent filed its *Motion to Dismiss for Failure to Prosecute and Memorandum In Support* thereof.

11. On October 30th, 2003 both parties appeared for the scheduled status hearing ordered by Judge Hall.

12. On October 30th, 2003, Complainant filed his *Response to Sara Lee's Motion To Dismiss for Failure to Prosecute*.

13. On October 30th, 2003, during the scheduled status hearing, Judge Hall entered and continued Respondent's *Motion to Dismiss for Failure to Prosecute*. Judge Hall also ordered the parties to appear for final status on December 10th, 2003, the date by which the pre-hearing memorandum was to be filed with the Commission.

14. On December 10th, 2003, Respondent appeared for the scheduled status hearing and Complainant failed to appear. On that date, Chief Administrative Law Judge Mary K. Kennedy ordered that Respondent's *Motion to Dismiss for Failure to Prosecute* would be taken under advisement, with ruling to be made by mail.

15. On December 10th, 2003, Respondent filed a Certificate of Service with the Commission certifying that it had served a copy of Judge Kennedy's order of December 10th upon Complainant's counsel.

16. On December 16th, 2003, Complainant's counsel filed *Complainant's Motion to Set a Date Certain for Joint PreTrial Memorandum*.

17. On December 22nd, 2003, Respondent filed its *Response to Complainant's Motion to Set a Date Certain for Joint Pre-Trial Memorandum*.

18. In a written order, entered January 14th, 2004, Judge Kennedy denied Respondent's *Motion to Dismiss for Failure to Prosecute* and ordered the parties to appear before Administrative Law Judge Mariette Lindt for a status hearing on January 20th, 2004.

19. In Judge Kennedy's order of January 14th, 2004 denying Respondent's *Motion to Dismiss for Want of Prosecution*", Judge Kennedy warned: "If Complainant continues to unreasonably delay these proceedings by failing to appear for scheduled status and hearing dates, Complainant may be subject to sanction and/or dismissal of his complaint."

20. On January 20th, 2004, both parties appeared before Judge Lindt for status. On that date, Judge Lindt ordered the parties to file their *Joint Pre-Hearing Memorandum* by February 6th, 2004. Judge Lindt, further ordered that the parties were to appear for final status on March 3rd, 2004.

21. On February 6th, 2004, the parties filed their *Joint Pre-Hearing Memorandum* with the Commission.

22. On March 3rd, 2004, both parties appeared for the final status hearing. On that date, Judge Lindt scheduled the public hearing in this matter to begin on June 3rd, 2004 at 9:30 a.m.

23. On June 3rd, 2004, the scheduled date of the public hearing, both Complainant's and Respondent's counsel appeared at the Commission.

24. On June 3rd, 2004, Complainant's counsel made an oral motion for a continuance of the public hearing. After listening to argument from both Complainant's and Respondent's counsel regarding Complainant's oral motion for continuance of the public

hearing, this tribunal denied that motion and indicated that a recommended order of dismissal for want of prosecution would be forthcoming.

CONCLUSIONS OF LAW

1. Complainant's counsel's failure to comply with the Administrative Law Judge's order of July 24th, 2003, ordering Complainant to appear at a scheduled final status hearing on September 25th, 2003, has unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750 (e).

2. Complainant's counsel's failure to comply with the Administrative Law Judge's order of October 30th, 2003, ordering Complainant to appear at a scheduled final status hearing on December 10th, 2003, has unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

3. Complainant's counsel's failure to request a continuance of the scheduled final status hearings of September 25th, 2003 and December 10th, 2003 has unreasonably delayed and protracted the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

4. Complainant's counsel's failure to comply with the Administrative Law Judge's order of July 24th, 2003, ordering Complainant to serve Respondent with his initial draft of the Pre-Hearing Memorandum by August 23rd, 2003, has unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

5. Complainant Barrios' failure to appear for the scheduled public hearing on June 3rd, 2004, amounts to unreasonable conduct and has caused further unreasonable delay of the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

6. Complainant's counsel's failure to request a continuance of the scheduled public hearing, reasonably in advance of June 3rd, 2004, has caused further unreasonable delay of these proceedings. 56 Ill. Admin. Code Part 5300.750(e).

DISCUSSION

Throughout the course of litigation, Complainant has repeatedly made the choice to ignore this tribunal's orders. Complainant chose to ignore the August 23rd, 2003 deadline for submission of his draft pre-hearing memorandum. Complainant never bothered to file a motion for an extension of time. Additionally, Complainant never bothered to file a motion for a continuance of the September 25th, 2003 or December 10th, 2003 final status hearings. Complainant simply did not show up.

Complainant filed his Response to Respondent's *Motion to Dismiss for Failure to Prosecute* while in attendance at a scheduled status hearing on October 30th, 2003. In his Response, Complainant attributes his failure to comply with the August 23rd, 2003 deadline for submission of his draft pre-hearing memorandum to an inadvertent scheduling error. He also attributes his failure to appear at the September 25th, 2003 final status hearing to an inadvertent scheduling error. However, even after filing his Response at the October 30th status hearing and being ordered on that date to appear again for final status on December 10th, 2003, Complainant *again* failed to appear on December 10th, 2003. Only Complainant knows if this was due to another *inadvertent scheduling error*.

Judge Kennedy's order of January 14th, 2004 denying Respondent's *Motion to Dismiss for Failure to Prosecute* recognized that Complainant had failed to appear for the December 10th, 2003 status hearing - - a hearing that occurred *after* the filing of that motion and Complainant's response thereto. In her order, Judge Kennedy specifically warned that if Complainant continued to unreasonably delay the proceedings by failing to appear for scheduled status and hearing dates, Complainant would be subject to sanctions and/or dismissal of his complaint. Despite Judge Kennedy's clear warning, Complainant Barrios failed to appear with his attorney on June 3rd, 2004 to begin the public hearing. In fact, on that date, Complainant's counsel appeared before this tribunal

and made an oral motion for a continuance of the hearing. Complainant's counsel argued that he had not had contact with Barrios in over thirty (30) days. It is important to point out that the public hearing in this matter had been scheduled since March 3rd, 2004.

There is absolutely no excuse for Complainant's complete and utter failure to have requested a continuance prior to the June 3rd hearing date. On that date, Complainant once again, engaged in clearly unreasonable conduct that served to delay the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750 (e)

The Commission's procedural rules provide that the Administrative Law Judge may grant continuances for good cause shown and that such requests shall be made *in writing, sufficiently in advance of the scheduled hearing to permit reasonable notice to all parties*. 56 Ill. Admin. Code Part 5300.530(d). Complainant's decision to make his oral motion for a continuance on the morning of the hearing is simply inexcusable.

RECOMMENDATION

Based upon the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission dismiss the complaint, together with the underlying charge (No. 2002CF0474), with prejudice for want of prosecution.

ENTERED: July 9th, 2004

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

